IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.8929 of 2005

For Approval and Signature:
HON'BLE MR.JUSTICE D.A.MEHTA Sd/-

HON'BLE MS.JUSTICE H.N.DEVANI Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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FAVORITE INDUSTRIES & 2 - Petitioner(s)
Versus
UNION OF INDIA & 2 - Respondent(s)

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Appearance :
MR DHAVAL SHAH for Petitioner No(s).: 1,2,3.
MR JITENDRA MALKAN for Respondent No(s).: 1.
NOTICE SERVED BY DS for Respondent No(s).: 2,3.

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CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date : 22/07/2005

ORAL JUDGMENT
(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1. Heard Mr.Dhaval Shah for Mr.Hardik Modh, learned advocate for the petitioners, and Mr.Jitendra Malkan for the respondent. Considering the issue

involved, the matter is taken up for final hearing and disposal with the consent of the learned counsel. RULE. Mr.Jitendra Malkan waives service of rule on behalf of the respondent.

2. The petitioners filed an appeal before the Customs, Excise and Gold (Control) Appellate Tribunal, West Zonal Bench, at Mumbai (as it was then known) against the order dated 30th September, 2002 made by the Commissioner of Central Excise, Mumbai. It appears that on 13th May, 2003 the Tribunal directed the petitioners to pre-deposit duty amount of Rs.7,66,516/- and on such compliance the penalty on the firm and on each of the partners was to stand waived and recovery thereof was stayed pending the appeals. The petitioners were to report compliance on 25th July, 2003.

3. On 29th August, 2003 the appeals came to be dismissed for want of compliance with the order of pre-deposit dated 13th May, 2003.

4. The petitioners moved an application seeking restoration of the appeals. However, by order

dated 14th January, 2005 the restoration of appeal application came to be rejected. It appears that the petitioners had filed an application for restoration on coming to know about dismissal of appeal and the stay application when the Superintendent of Central Excise called upon the petitioners to discharge the duty liability.

5. On 7th January, 2005 the petitioners filed an adjournment application on the ground that the advocate of the applicants was out of station on 14th January, 2005 when the restoration application was posted for hearing. The Tribunal vide order dated 14th January, 2005 rejected the adjournment request after recording that “The fee of Rs.500/- for adjournment has not been deposited.”. As a consequence the application for restoration of appeals was also rejected by the same order. It is this order which is under challenge.

6. On 11th May, 2005, after hearing the learned advocate for the petitioners, a direction was made for issuance of notice subject to the petitioners depositing an amount of

Rs.2,00,000/-. It is reported that the petitioners have duly complied with the said order.

7. The Tribunal has rejected the request for adjournment on the basis of provisions of sub-section (7) of Section 35B of the Central Excise Act, 1944. The said provision reads as under:-

> "(7) Every application made before the Appellate Tribunal,--
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> (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or
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> (b) for restoration of an appeal of an application,
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> shall be accompanied by a fee of five hundred rupees:
>
> Provided that no such fee shall be payable in the case of an application filed by or on behalf of the Commissioner of Central Excise under this sub-section."

8. It appears that Vice President of the Tribunal has issued Public Notice No. 01 of 2005 dated February 11, 2005 clarifying that no fee is required to be collected / paid on adjournment / pass over / memorandum under Rule 28B of the CESTAT (Procedure) Rules, 1982. On the basis of

the aforesaid public notice it is contended on behalf of the petitioners that the adjournment application was wrongly rejected and hence, prays that the order dated 14th January, 2005 be quashed and set aside.

9. It is apparent from the facts on record that on the date when the Tribunal made the order i.e. 14th January, 2005 Public Notice No. 01 of 2005 dated 11th February, 2005 (Exh.J) was not available and as such the order made by the Tribunal was in consonance with the provision of Section 35B(7) of the Act. However, considering the contents and the essence of the public notice, it would be in the interest of justice if the impugned order dated 14th January, 2005 (Exh.-I), whereby the adjournment application as well as application for restoration of appeal came to be rejected, is hereby quashed and set aside. The Tribunal has lost sight of the basic premise that it is respected as an institution because it delivers fair and speedy justice. However, in its anxiety to deliver quick justice, only the requirement of disposal should not outweigh the requirement of justice. Procedure and adherence

to its requirement has to be guided and tempered by justice. If the Tribunal was of the opinion that the application for adjournment was required to be accompanied by a fee of Rs.500/- it could have called upon the petitioners to make the deposit. Mere non-compliance with the procedural requirement could not have led to disposal of the main application as the Tribunal has done.

10. In these circumstances, the impugned order (at Exh.I) is hereby quashed and set aside and the restoration application is restored to the file of the Tribunal to be heard and disposed off on merits of the matter. The petitioners, are directed to appear before the Tribunal on 1st August, 2005 in the first instance. On the said day, the Tribunal shall fix up a convenient date for hearing the restoration application at which the petitioners shall appear without fail.

11. The petition is, accordingly, allowed in the aforesaid terms. Rule made absolute. There shall be no order as to costs.

Sd/-
[D.A. MEHTA, J]

Sd/-
[H.N. DEVANI, J]

*Bhavesh**